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SENATE BILL 711

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

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AN ACT

RELATING TO THE ENVIRONMENT; EXEMPTING PRESCRIBED FIRES
CONDUCTED BY THE STATE FORESTER FROM THE AIR QUALITY CONTROL
ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 74-2-2 NMSA 1978 (being Laws 1967,
Chapter 277, Section 2, as amended) is amended to read:

"74-2-2. DEFINITIONS. -- As used in the Air Quality Control
Act:

A. "air contaminant" means a substance, including
any particulate matter, fly ash, dust, fumes, gas, mist, smoke,
vapor, microorganisms, radioactive material, any combination
thereof or any decay or reaction product thereof, except for
any substance resulting from a prescribed fire managed by the
state forester;

underscored material = new
[bracketed material] = delete

1 B. "air pollution" means the emission, except
2 emission that occurs in nature or that results from a
3 prescribed fire managed by the state forester, into the outdoor
4 atmosphere of one or more air contaminants in quantities and of
5 a duration that may with reasonable probability injure human
6 health or animal or plant life or as may unreasonably interfere
7 with the public welfare, visibility or the reasonable use of
8 property;

9 C. "department" means the department of
10 environment;

11 D. "director" means the administrative head of a
12 local agency;

13 E. "emission limitation" or "emission standard"
14 means a requirement established by the environmental
15 improvement board or the local board, the department, the local
16 authority or the local agency or pursuant to the federal act
17 that limits the quantity, rate or concentration, or combination
18 thereof, of emissions of air contaminants on a continuous
19 basis, including any requirements relating to the operation or
20 maintenance of a source to assure continuous reduction;

21 F. "federal act" means the federal Clean Air Act,
22 its subsequent amendments and successor provisions;

23 G. "federal standard of performance" means a
24 standard of performance, emission limitation or emission
25 standard adopted pursuant to 42 U.S.C. Section 7411 or 7412;

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[bracketed material] = delete

1 H. "hazardous air pollutant" means an air
2 contaminant that has been listed as a hazardous air pollutant
3 pursuant to the federal act;

4 I. "local agency" means the administrative agency
5 established by a local authority pursuant to Paragraph (2) of
6 Subsection A of Section 74-2-4 NMSA 1978;

7 J. "local authority" means any of the following
8 political subdivisions of the state that have, by following the
9 procedure set forth in Subsection A of Section 74-2-4 NMSA
10 1978, assumed jurisdiction for local administration and
11 enforcement of the Air Quality Control Act:

12 (1) a county that was a class A county as of
13 January 1, 1980; or

14 (2) a municipality with a population greater
15 than one hundred thousand located within a county that was a
16 class A county as of January 1, 1980;

17 K. "local board" means a municipal, county or joint
18 air quality control board created by a local authority;

19 L. "mandatory class I area" means any of the
20 following areas in this state that were in existence on August
21 7, 1977:

22 (1) national wilderness areas that exceed five
23 thousand acres in size; and

24 (2) national parks that exceed six thousand
25 acres in size;

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1 M "modification" means a physical change in, or
2 change in the method of operation of, a source that results in
3 an increase in the potential emission rate of a regulated air
4 contaminant emitted by the source or that results in the
5 emission of a regulated air contaminant not previously emitted,
6 but does not include:

7 (1) a change in ownership of the source;

8 (2) routine maintenance, repair or
9 replacement;

10 (3) installation of air pollution control
11 equipment, and all related process equipment and materials
12 necessary for its operation, undertaken for the purpose of
13 complying with regulations adopted by the environmental
14 improvement board or the local board or pursuant to the federal
15 act; or

16 (4) unless previously limited by enforceable
17 permit conditions:

18 (a) an increase in the production rate,
19 if such increase does not exceed the operating design capacity
20 of the source;

21 (b) an increase in the hours of
22 operation; or

23 (c) use of an alternative fuel or raw
24 material if, prior to January 6, 1975, the source was capable
25 of accommodating such fuel or raw material or if use of an

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[bracketed material] = delete

1 alternate fuel or raw material is caused by a natural gas
2 curtailment or emergency allocation or [~~an other~~] another lack
3 of supply of natural gas;

4 N. "nonattainment area" means for an air
5 contaminant an area that is designated "nonattainment" with
6 respect to that contaminant within the meaning of Section
7 107(d) of the federal act;

8 O. "person" includes an individual, partnership,
9 corporation, association, the state or political subdivision of
10 the state and any agency, department or instrumentality of the
11 United States and any of their officers, agents or employees;

12 P. "potential emission rate" means the emission
13 rate of a source at its maximum capacity to emit a regulated
14 air contaminant under its physical and operational design,
15 provided any physical or operational limitation on the capacity
16 of the source to emit a regulated air contaminant, including
17 air pollution control equipment and restrictions on hours of
18 operation or on the type or amount of material combusted,
19 stored or processed, shall be treated as part of its physical
20 and operational design only if the limitation or the effect it
21 would have on emissions is enforceable by the department or the
22 local agency pursuant to the Air Quality Control Act or the
23 federal act;

24 Q. "prescribed fire" means a fire that is managed,
25 based on pre-established protocols for the control of competing

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1 vegetation, insects, disease or wildfire potential, to improve
2 the habitat, watershed or ecological balance or to prepare the
3 forest seed bed for vegetative regeneration;

4 [Q.] R. "regulated air contaminant" means an air
5 contaminant, the emission or ambient concentration of which is
6 regulated pursuant to the Air Quality Control Act or the
7 federal act;

8 [R.] S. "secretary" means the secretary of
9 environment;

10 [S.] T. "significant deterioration" means an
11 increase in the ambient concentrations of an air contaminant
12 above the levels allowed by the federal act or federal
13 regulations for that air contaminant in the area within which
14 the increase occurs;

15 [T.] U. "source" means a structure, building,
16 equipment, facility, installation or operation, except for a
17 prescribed fire managed by the state forester, that emits or
18 may emit an air contaminant;

19 [U.] V. "standard of performance" means a
20 requirement of continuous emission reduction, including any
21 requirement relating to operation or maintenance of a source to
22 assure continuous emission reduction;

23 [V.] W. "state implementation plan" means a plan
24 submitted by New Mexico to the federal environmental protection
25 agency pursuant to 42 U.S.C. Section 7410; and

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